

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:
Craig D. CUTTNER et al.

For: INTEGRATED MEDIA VIEWING
ENVIRONMENT

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Serial No.: 10/753,860

Examiner: Hyun J. Hong

Art Unit: 2426

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Signature: /Aaron Grunberger/
Aaron Grunberger (Reg. No. 59,210)

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

SIR:

On December 8, 2008, Appellants submitted a Notice of Appeal from the last decision of the Examiner contained in the Final Office Action dated July 8, 2008 in the above-identified patent application.

In accordance with 37 C.F.R. § 41.37, this brief is submitted in support of the appeal of the final rejections of claims 1, 3 to 24, and 26 to 35. For at least the reasons set forth below, the final rejections of claims 1, 3 to 24, and 26 to 35 should be reversed.

1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Home Box Office, Inc. of New York, New York, United States of America, which is the assignee of the entire right, title and interest in the present application.

2. RELATED APPEALS AND INTERFERENCES

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Home Box Office, Inc., "which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal."

3. STATUS OF CLAIMS

Claims 2 and 25 have been canceled.

Claims 1, 4 to 8, 12, 17, 24, 26, 29, 34, and 35 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent Application Publication No. 2003/0146940 (“Ellis et al.”) and U.S. Patent Application Publication No. 2003/0208763 (“McElhatten et al.”).

Claims 3 and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al., McElhatten et al., and U.S. Patent Application Publication No. 2004/0060063 (“Russ et al.”).

Claims 9 to 11, and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al., McElhatten et al., and U.S. Patent Application Publication No. 2003/0005429 (“Colsey”).

Claims 13 to 15, and 28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al., McElhatten et al., and U.S. Patent Application Publication No. 2003/0177495 (“Needham et al.”).

Claims 18 and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al., McElhatten et al., and U.S. Patent Application Publication No. 2003/0005445 (“Schein et al.”).

Claims 20 to 23, and 30 to 33 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 6,515,680 (“Hendricks et al.”), Ellis et al., and U.S. Patent No. 5,945,987 (“Dunn”).

Appellants appeal from the final rejections of claims 1, 3 to 24, and 26 to 35.

A copy of the appealed claims, *i.e.*, claims 1, 3 to 24, and 26 to 35, is attached hereto in the Claims Appendix.

4. STATUS OF AMENDMENTS

In response to the Final Office Action dated July 8, 2008, Appellants submitted a “Response” on September 25, 2008. The Response did not include any proposed amendments to the claims. As such, it is Appellants’ understanding that the claims as included in the annexed “Claims Appendix” reflect the current status of the claims.

5. **SUMMARY OF THE CLAIMED SUBJECT MATTER**

Independent claim 1 relates to a method for displaying a media guide to a user. *Specification*, p. 2, ll. 4 to 6. Claim 1 includes receiving information regarding media programs which include: i) programs that are immediately available to the user via download or data streaming; ii) programs that have been previously stored locally relative to the user; and iii) programs that are immediately available to the user via television broadcast, the information including titles of the media programs. *Specification*, p. 2, ll. 6 to 9. Claim 1 includes displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming, a title of at least one of the programs that have been previously stored locally relative to the user, and a title of at least one of the programs that are immediately available to the user via television broadcast. *Specification*, p. 5, ll. 9 to 12.

Independent claim 20 relates to a method of displaying a program guide to a user. *Specification*, p. 2, ll. 4 to 6. Claim 20 includes receiving information from a programming provider that indicates suggested media programs. *Specification*, p. 8, ll. 29 to 32. Claim 20 includes receiving express user preferences from the user. *Specification*, p. 8, ll. 12 to 23. Claim 20 includes displaying, on a single page and in a first list, titles of at least some of the suggested media programs. *Specification*, p. 1, ll. 28 to 30. Claim 20 includes displaying, on the single page in a second list, titles of at least some media programs that are immediately available to the user and that meet at least one of the user preferences, a separation of the first and second lists being demarcated. *Specification*, p. 1, ll. 30 to 31.

Independent claim 23 relates to a method of displaying a program guide to a user. *Specification*, p. 2, ll. 4 to 6. Claim 23 includes receiving user preferences. *Specification*, p. 8, ll. 12 to 23. Claim 23 includes receiving an indication of a priority of a programming provider. *Specification*, p. 8, ll. 29 to 32. Claim 23 includes receiving respective metadata associated with available media programs. *Specification*, p. 12, ll. 14 to 16. Claim 23 includes comparing the user preferences to the metadata. *Specification*, p. 18, ll. 6 to 10. Claim 23 includes displaying, on a single page and in a first list, a first title of at least one of the available media programs if the respective metadata associated with the at least one of the available media programs matches at least one of the user preferences. *Specification*, p. 1, ll. 28 to 30. Claim 23 includes displaying, on the single page in a second list, a second title of at least another of the available media programs based on the priority of the programming provider, even if the respective metadata associated with the at least another

of the available media programs does not match at least one of the user preferences, wherein a separation of the first and second lists is demarcated. *Specification*, p. 1, ll. 30 to 31.

Independent claim 24 relates to a system. *Specification*, p. 13, ll. 30 to 32. Claim 24 includes a processor. *Specification*, p. 14, l. 10. Claim 24 includes at least one arrangement configured to communicate with the processor via a communications network. *Specification*, p. 14, ll. 11 to 13, and p. 15, ll. 15 to 16. Claim 24 includes a computer-readable storing medium storing a set of instructions, the set of instructions capable of being executed by the processor to implement a method for displaying a media guide to a user. *Specification*, p. 13, ll. 30 to 33. Claim 24 includes receiving information regarding media programs which include: i) programs that are immediately available to the user via download or data streaming; programs that have been previously stored locally relative to the user; and iii) programs that are immediately available to the user via television broadcast, the information including titles of the media programs. *Specification*, p. 2, ll. 6 to 9. Claim 24 includes displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming, a title of at least one of the programs that have been previously stored locally relative to the user, and a title of at least one of the programs that are immediately available to the user via television broadcast. *Specification*, p. 5, ll. 9 to 12.

Independent claim 30 relates to a system. *Specification*, p. 13, ll. 30 to 32. Claim 30 includes a processor. *Specification*, p. 14, l. 10. Claim 30 includes at least one arrangement configured to communicate with the processor via a communications network. *Specification*, p. 14, ll. 11 to 13, and p. 15, ll. 15 to 16. Claim 30 includes a computer-readable storing medium storing a set of instructions, the set of instructions capable of being executed by the processor to implement a method for displaying a program guide to a user. *Specification*, p. 13, ll. 30 to 33. Claim 30 includes receiving information from a programming provider that indicates suggested media programs. *Specification*, p. 8, ll. 29 to 32. Claim 30 includes receiving express user preferences from the user. *Specification*, p. 8, ll. 12 to 23. Claim 30 includes displaying, on a single page and in a first list, titles of at least some of the suggested media programs. *Specification*, p. 1, ll. 28 to 30. Claim 30 includes displaying, on the single page in a second list, titles of at least some media programs that are immediately available to the user and that meet at least one of the user preferences, a separation of the first and second lists being demarcated. *Specification*, p. 1, ll. 30 to 31.

Independent claim 33 relates to a system. *Specification*, p. 13, ll. 30 to 32. Claim 33 includes a processor. *Specification*, p. 14, l. 10. Claim 33 includes at least one arrangement configured to communicate with the processor via a communications network. *Specification*, p. 14, ll. 11 to 13, and p. 15, ll. 15 to 16. Claim 33 includes a computer-readable storing medium storing a set of instructions, the set of instructions capable of being executed by the processor to implement a method for displaying a program guide to a user. *Specification*, p. 13, ll. 30 to 33. Claim 33 includes receiving user preferences. *Specification*, p. 8, ll. 12 to 23. Claim 33 includes receiving an indication of a priority of a programming provider. *Specification*, p. 8, ll. 29 to 32. Claim 33 includes receiving respective metadata associated with available media programs. *Specification*, p. 12, ll. 14 to 16. Claim 33 includes comparing the user preferences to the metadata. *Specification*, p. 18, ll. 6 to 10. Claim 33 includes displaying, on a single page and in a first list, a first title of at least one of the available media programs if the respective metadata associated with the at least one of the available media programs matches at least one of the user preferences. *Specification*, p. 1, ll. 28 to 30. Claim 33 includes displaying, on the single page in a second list, a second title of at least another of the available media programs based on the priority of the programming provider, even if the respective metadata associated with the at least another of the available media programs does not match at least one of the user preferences, wherein a separation of the first and second lists is demarcated. *Specification*, p. 1, ll. 30 to 31.

The appealed claims include no means-plus-function language and no step-plus-function claims, so that 41.37(c)(1)(v) is satisfied as to its specific requirements for such claims, since none are present here.

6. **GROUND OF REJECTIONS TO BE REVIEWED ON APPEAL**

A. Whether claims 1, 4 to 8, 12, 17, 24, 26, 29, 34, and 35, which stand rejected under 35 U.S.C. § 103(a), are patentable over the combination of Ellis et al. and McElhatten et al.

B. Whether claims 3 and 16, which stand rejected under 35 U.S.C. § 103(a), are patentable over the combination of Ellis et al., McElhatten et al., and Russ et al.

C. Whether claims 9 to 11, and 27, which stand rejected under 35 U.S.C. § 103(a), are patentable over the combination of Ellis et al., McElhatten et al., and Colsey.

D. Whether claims 13 to 15, and 28, which stand rejected under 35 U.S.C. § 103(a), are patentable over the combination of Ellis et al., McElhatten et al., and Needham et al.

E. Whether claims 18 and 19, which stand rejected under 35 U.S.C. § 103(a), are patentable over the combination of Ellis et al., McElhatten et al., and Schein et al.

F. Whether claims 20 to 23, and 30 to 33, which stand rejected under 35 U.S.C. § 103(a), are patentable over the combination of Hendricks et al., Ellis et al., and Dunn.

7. **ARGUMENTS**

A. Rejection of Claims 1, 4 to 8, 12, 17, 24, 26, 29, 34, and 35 Under 35 U.S.C. § 103(a)

Claims 1, 4 to 8, 12, 17, 24, 26, 29, 34, and 35 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al. and McElhatten et al. It is respectfully submitted that the combination of Ellis et al. and McElhatten et al. does not render unpatentable any of claims 1, 4 to 8, 12, 17, 24, 26, 29, 34, and 35 for at least the following reasons.

To reject a claim as obvious under 35 U.S.C. § 103, the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied.

First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). As clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396.

Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986).

Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). As explained herein, the Examiner does satisfy these requirements as to all of the features of the claims.

Claim 1 relates to a method for displaying a media guide to a user, and recites, *inter alia*, the following:

displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming, a title of at least one of the programs that have been previously stored locally relative to the user, and a title of at least one of the programs that are immediately available to the user via television broadcast.

Ellis et al. do not disclose or suggest these features. Instead, Ellis et al. refer to displaying only television broadcast program information on a single display page generated based on a user profile. See Ellis et al., e.g., figures 6, 7, 8a, 8b, 8c, 11, 16a, 16b, and 16c. Indeed, the Final Office Action at page 3 admits this critical deficiency of Ellis et al.

The Examiner, in the Final Office Action, refers to ¶¶ [0122] and [0123], and figures 1 and 20A of McElhatten et al. as assertedly disclosing displaying, in a single integrated list, recommended titles which include a title of i) a program immediately available download or data streaming, ii) a program that has been previously locally stored, and iii) an immediately available television broadcast program. However, McElhatten et al. are unrelated to a list of recommended titles, as provided for in the context of claim 1. For example, figure 20A of McElhatten et al. merely shows a complete schedule of programs, but does not show a list of recommended titles. Indeed, McElhatten et al. seek to make all programs available to a user, as evidenced by the statement that “with the invention [of McElhatten et al.], a user advantageously can enjoy any desired programs anytime, thereby transcending traditional program schedule limitations.” See McElhatten et al., ¶ [0011].

The cited references provide no suggestion or motivation to modify the list of Ellis et al., which is generated based on a profile, to include the features of the integrated list of McElhatten et al. For example, the reason for showing the already recorded programs in the list of McElhatten et al. is not applicable to the list of Ellis et al. In McElhatten et al., the reason for providing listings of already recorded programs is to provide a complete schedule history. However, a list of recommended titles or a list of titles based on a user profile is generated precisely to limit the listings to only those titles which are recommended. See, e.g., Ellis et al., ¶ [0008]. One skilled in the art would not have modified such a limited list to be

expanded to include listings of previously recorded programs because characteristics of recorded programs are conventionally thought to be known to the user since they are already “owned” and previously selected programs, and thus one would not have thought there to be any need for them to be further recommended.

In the Advisory Action, the Examiner notes that the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. However, one skilled in the art would not have arrived at the features of claim 1 based on that which is disclosed in McElhatten et al. and Ellis et al. because, as explained above, a conventionally generated list of recommended titles would not include previously recorded programs and nothing in the cited references suggests a break from such a conventional listing. The Examiner further notes that the references (specifically Ellis et al.) do not explicitly exclude recorded programs from the list of recommended titles. However, silence does not amount to disclosure. It is conventionally understood that a list of recommended titles would not include recorded programs, and no reference has been cited that suggests otherwise.

The Examiner, in the Advisory Action, further refers to ¶ [0127] and figure 21 of McElhatten et al. as assertedly disclosing displaying, in a single integrated list, recommended titles which include a title of i) a program immediately available download or data streaming, ii) a program that has been previously locally stored, and iii) an immediately available television broadcast program. However, the “My Shows GUI” of figure 21 of McElhatten et al. merely includes already reserved programs, or programs to be reserved, which includes programs chosen by a user or based on a user profile, which does not “coincide[] with the [recommended] program listing of Ellis” as suggested in the Advisory Action. Since the “My Shows GUI” of McElhatten et al. includes programs chosen by a user, nowhere do McElhatten et al., whether considered alone or in combination with Ellis et al., disclose a single integrated list of recommended titles as provided for in the context of claim 1. Nowhere do McElhatten et al. disclose a single integrated list of recommended titles, including a download or data streaming title, a previously locally stored title, and a broadcast program title, as provided for in the context of claim 1. Ellis et al. do not correct this critical deficiency of McElhatten et al., as explained above. Therefore, the combination of Ellis et al. and McElhatten et al. would not have suggested to one of ordinary skill in the art all of the features of claim 1.

The novel features of claim 1 provide additional advantages to the user by including in a single list of recommended programs, programs that are already recorded and

non-recorded programs so that a user may prioritize the user's viewing experience with respect to both kinds of programs. As explained more fully above, the cited references, whether considered alone or in combination, do not disclose or suggest these features.

Therefore, the combination of Ellis et al. and McElhatten et al. does not disclose or suggest all of the features of claim 1, so that the combination of Ellis et al. and McElhatten et al. does not render unpatentable claim 1.

Claims 4 to 8, 12, 17, and 34 ultimately depend from claim 1, and therefore include all of the features of claim 1, so that the combination of Ellis et al. and McElhatten et al. does not render unpatentable any of these dependent claims for at least the same reasons set forth above in support of the patentability of claim 1. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) (any dependent claim that depends from a non-obvious independent claim is non-obvious).

Claim 24 includes subject matter analogous to that of claim 1, so that the combination of Ellis et al. and McElhatten et al. does not render unpatentable claim 24 for at least essentially the same reasons set forth above in support of the patentability of claim 1.

Claims 26, 29, and 35 depend from claim 24, and therefore include all of the features of claim 24, so that the combination of Ellis et al. and McElhatten et al. does not render unpatentable any of these dependent claims for at least the same reasons set forth above in support of the patentability of claim 24. *In re Fine, supra*.

Reversal of this rejection is therefore respectfully requested.

B. Rejection of Claims 3 and 16 Under 35 U.S.C. § 103(a)

Claims 3 and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al., McElhatten et al., and Russ et al. It is respectfully submitted that the combination of Ellis et al., McElhatten et al., and Russ et al. does not render unpatentable any of claims 3 and 16 for at least the following reasons.

Claims 3 and 16 ultimately depend from claim 1 so that these dependent claims are allowable for at least the same reasons set forth above in support of the patentability of claim 1, since Russ et al. do not correct the critical deficiencies noted above with respect to the combination of Ellis et al. and McElhatten et al. *In re Fine, supra*.

Reversal of this rejection is therefore respectfully requested.

C. Rejection of Claims 9 to 11, and 27 Under 35 U.S.C. § 103(a)

Claims 9 to 11, and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al., McElhatten et al., and Colsey. It is respectfully submitted that the combination of Ellis et al., McElhatten et al., and Colsey does not render unpatentable any of claims 9 to 11, and 27 for at least the following reasons.

Claims 9 to 11 ultimately depend from claim 1, and claim 27 depends from claim 24, so that these dependent claims are allowable for at least the same reasons set forth above in support of the patentability of claims 1 and 24, respectively, since Colsey does not cure the critical deficiencies noted above with respect to the combination of Ellis et al. and McElhatten et al. *In re Fine, supra*.

Reversal of this rejection is therefore respectfully requested.

D. Rejection of Claims 13 to 15, and 28 Under 35 U.S.C. § 103(a)

Claims 13 to 15, and 28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al., McElhatten et al., and Needham et al. It is respectfully submitted that the combination of Ellis et al., McElhatten et al., and Needham et al. does not render unpatentable any of claims 13 to 15, and 28 for at least the following reasons.

Claims 13 to 15 ultimately depend from claim 1, and claim 28 depends from claim 24, so that these dependent claims are allowable for at least the same reasons set forth above in support of the patentability of claims 1 and 24, respectively, since Needham et al. do not cure the critical deficiencies noted above with respect to the combination of Ellis et al. and McElhatten et al. *In re Fine, supra*.

Reversal of this rejection is therefore respectfully requested.

E. Rejection of Claims 18 and 19 Under 35 U.S.C. § 103(a)

Claims 18 and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellis et al., McElhatten et al., and Schein et al. It is respectfully submitted that the combination of Ellis et al., McElhatten et al., and Schein et al. does not render unpatentable any of claims 18 and 19 for at least the following reasons.

Claims 18 and 19 depend from claim 1, so that these dependent claims are allowable for at least the same reasons set forth above in support of the patentability of claim 1, since Schein et al. do not cure the critical deficiencies noted above with respect to Ellis et al. and McElhatten et al. *In re Fine, supra*.

Reversal of this rejection is therefore respectfully requested.

F. Rejection of Claims 20 to 23, and 30 to 33 Under 35 U.S.C. § 103(a)

Claims 20 to 23, and 30 to 33 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Hendricks et al., Ellis et al., and Dunn. It is respectfully submitted that the combination of Hendricks et al., Ellis et al., and Dunn does not render unpatentable any of claims 20 to 23, and 30 to 33 for at least the following reasons.

Claim 20 relates to a method of displaying a program guide to a user, and recites, *inter alia*, the following:

*. . . c) displaying, on a single page and in a first list, titles of at least some of the suggested media programs; and
d) displaying, on the single page in a second list, titles of at least some media programs that are immediately available to the user and that meet at least one of the user preferences, a separation of the first and second lists being demarcated.*

The Examiner, in the Final Office Action at page 10, admits that “Hendricks does not specifically disclose . . . d) displaying in a second list, titles of at least some media programs that are immediately available to the user and that meet at least one of the user preferences.” In addition, the Examiner admits that “Hendricks in view of Ellis does not disclose displaying a first and second list on a single page, a separation of the first and second lists being demarcated.” Final Office Action, page 11. Thus, the combination of Hendricks et al. and Ellis et al. does not disclose or suggest displaying both a first list of titles and a second list of titles on a single page. At most, each of Hendricks et al. and Ellis et al. merely indicate a single list of titles on a single page.

Further, the Examiner refers to figure 5 of Dunn as assertedly disclosing “displaying a first and second list on a single page, a separation of the first and second lists being demarcated.” Final Office, page 11. However, figure 5 of Dunn merely shows a list of stars 102 and a list of programs 108, which corresponds to a selection from the list of stars 102. *See* Dunn, col. 8, lines 12 to 23; and col. 9, lines 36 to 49. That is, figure 5 of Dunn merely shows a single list of titles of media programs on the single page, similar to each of Hendricks et al. and Ellis et al. The second displayed list is of stars for a selected one of which the list of programs is presented.

Dunn merely shows a single list of program titles, and does not disclose two separate lists of program titles. In Dunn, the reason for the display of the two lists is because the lists are of different kinds of content altogether and serve different purposes. One list is to select a filter criterion (i.e., the stars list) and the other list is to present selectable programs that satisfy the selected filter criterion. Further, their simultaneous display is to visually represent how the returned second list relates to the criterion of the first list. In

Hendricks et al. and Ellis et al., on the other hand, the listings of the two lists do not share this kind of relationship to each other and, further, both lists serve the same purpose, i.e., to provide a list of selectable programs, so that the lists of Dunn are unrelated to those of Hendricks et al. and Ellis et al. and, contrary to the assertion of the Examiner in the Advisory Action, does not suggest any modification of the combined lists of Hendricks et al. and Ellis et al. Indeed, none of the cited references suggest to further modify the combined lists of selectable programs of Hendricks et al. and Ellis et al. so that the lists are on the same page, where a separation of the lists is demarcated, as provided for in the context of claim 20, to the extent that such modification of the references would have been completely unpredictable based on the cited art and necessarily relies on improper hindsight reasoning. Therefore, the combination of Ellis et al. and McElhatten et al. would not have suggested to one of ordinary skill in the art all of the features of claim 20.

Therefore, the combination of Hendricks et al., Ellis et al., and Dunn does not disclose or suggest all of the features of claim 20, so that the combination of Hendricks et al., Ellis et al., and Dunn does not render unpatentable claim 20.

Claims 21 and 22 depend from claim 20, and are therefore allowable for at least the same reasons as claim 20. *In re Fine, supra*.

Claims 23, 30, and 33 include subject matter analogous to that of claim 20, so that these claims are allowable for at least essentially the same reasons set forth above in support of the patentability of claim 20.

Claims 31 and 32 depend from claim 30, and are therefore allowable for at least the same reasons as claim 30. *In re Fine, supra*.

Reversal of this rejection is therefore respectfully requested.

8. CLAIMS APPENDIX

A “Claims Appendix” is attached hereto and appears on the pages labeled “Claims Appendix 1” to “Claims Appendix 6.”

9. EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellants in the appeal. An “Evidence Appendix” is nevertheless attached hereto.

10. RELATED PROCEEDINGS APPENDIX

As indicated above in Section 2, “[t]here are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Home Box Office, Inc., ‘which may be related to, directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal.’” As such, there are no “decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]” to be submitted. A “Related Proceedings Appendix” is nevertheless attached hereto.

11. CONCLUSION

For at least the reasons indicated above, Appellants respectfully submit that the art of record does not disclose or suggest the subject matter as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the subject matter recited in the claims of the present application is new, non-obvious and useful.

In view of all of the foregoing, reversal of all of the rejections set forth in the Final Office Action is therefore respectfully requested.

Respectfully submitted,

/Aaron Grunberger/

Dated: February 9, 2009

By: Aaron Grunberger (Reg. No. 59,210) for:
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CLAIMS APPENDIX

1. A method for displaying a media guide to a user, comprising:

receiving information regarding media programs which include: i) programs that are immediately available to the user via download or data streaming; ii) programs that have been previously stored locally relative to the user; and iii) programs that are immediately available to the user via television broadcast, the information including titles of the media programs; and

displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming, a title of at least one of the programs that have been previously stored locally relative to the user, and a title of at least one of the programs that are immediately available to the user via television broadcast.

3. The method according to claim 1, wherein the locally stored media programs include programs that are stored on a personal video recorder.

4. The method according to claim 1, wherein available to the user via television broadcast include programs that are available to the user via at least one of: i) satellite broadcast, and ii) cable broadcast.

5. The method according to claim 1, wherein the information includes data which describes content of the media programs, and wherein the method further comprises:

comparing the data that describes the content of the media programs to data that describes user preferences, wherein the displaying step includes displaying the titles based on a result of the comparison.

6. The method according to claim 5, further comprising:

receiving the user preferences expressly from the user.

7. The method according to claim 6, further comprising:

determining the user preferences based on a viewing history of the user.

8. The method according to claim 6, wherein the displaying step includes displaying titles of media programs that do not meet the user preferences and that meet a promotional priority of a service provider.

9. The method according to claim 1, further comprising:
in response to the user selecting one of the titles of the media programs, displaying a preview of a media program associated with the selected title.
10. The method according to claim 9, further comprising:
generating the preview based on flags transmitted from a central facility.
11. The method according to claim 9, further comprising:
receiving the preview with the media program associated with the selected title.
12. The method according to claim 1, wherein the media programs further include media programs that are available to the user in the future.
13. The method according to claim 1, wherein the titles are displayed with a graphical indication of availability of the media programs.
14. The method according to claim 13, wherein the graphical indication includes at least one of color shading and an icon.
15. The method according to claim 13, wherein the media programs include media programs that are available to the user in the future and programs that are stored locally, and wherein the graphical indication describes whether the media programs are one of immediately available for download or data streaming, immediately available via television broadcast, stored locally, and available in the future.
16. The method according to claim 1, further comprising:
in response to the user selecting one of the titles of the media programs, recording a television broadcast.
17. The method according to claim 1, further comprising:
in response to the user selecting one of the titles of the media programs, providing a media program via one of download and data streaming.
18. The method according to claim 1, further comprising:
in response to the user selecting one of the titles of the media programs, displaying information related to the selected media program, the information includes at least one of actor data, director data and genre data.

19. The method according to claim 1, further comprising:
prompting the user to at least one of pay a cost and wait a time period before
viewing a media program.

20. A method of displaying a program guide to a user, comprising:
a) receiving information from a programming provider that indicates suggested
media programs;
b) receiving express user preferences from the user;
c) displaying, on a single page and in a first list, titles of at least some of the suggested
media programs; and
d) displaying, on the single page in a second list, titles of at least some media
programs that are immediately available to the user and that meet at least one of the user
preferences, a separation of the first and second lists being demarcated.

21. The method according to claim 20, further comprising:
receiving metadata associated with at least some media programs, the metadata
including information that describes the media programs, wherein step d) includes comparing
the metadata to the express user preferences, and displaying titles of media programs based
on the comparison.

22. The method according to claim 20, wherein step d) includes displaying titles of
media programs that do not meet the user preferences and that meet a promotional priority of
a service provider.

23. A method of displaying a program guide to a user, comprising:
receiving user preferences;
receiving an indication of a priority of a programming provider;
receiving respective metadata associated with available media programs;
comparing the user preferences to the metadata; and
displaying, on a single page and in a first list, a first title of at least one of the
available media programs if the respective metadata associated with the at least one of the
available media programs matches at least one of the user preferences; and
displaying, on the single page in a second list, a second title of at least another of the
available media programs based on the priority of the programming provider, even if the
respective metadata associated with the at least another of the available media programs does
not match at least one of the user preferences, wherein a separation of the first and second
lists is demarcated.

24. A system, comprising:
a processor;
at least one arrangement configured to communicate with the processor via a communications network;
a computer-readable storing medium storing a set of instructions, the set of instructions capable of being executed by the processor to implement a method for displaying a media guide to a user, the set of instructions performing the steps of:

receiving information regarding media programs which include: i) programs that are immediately available to the user via download or data streaming; programs that have been previously stored locally relative to the user; and iii) programs that are immediately available to the user via television broadcast, the information including titles of the media programs; and

displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming, a title of at least one of the programs that have been previously stored locally relative to the user, and a title of at least one of the programs that are immediately available to the user via television broadcast.

26. The system according to claim 24, wherein the information includes data which describes content of the media programs, and wherein the method further comprises:

comparing the data that describes the content of the media programs to data that describes user preferences, wherein the displaying step includes displaying the titles based on a result of the comparison.

27. The system according to claim 24, wherein the method further comprises:
in response to the user selecting one of the titles of the media programs, displaying a preview of a media program associated with the selected title.

28. The system according to claim 24, wherein the titles are displayed with a graphical indication of availability of the media programs.

29. The system according to claim 24, wherein the method further comprises:
in response to the user selecting one of the titles of the media programs, providing a media program via one of download and data streaming.

30. A system, comprising:

- a processor;
- at least one arrangement configured to communicate with the processor via a communications network;
- a computer-readable storing medium storing a set of instructions, the set of instructions capable of being executed by the processor to implement a method for displaying a program guide to a user, the set of instructions performing the steps of:
 - a) receiving information from a programming provider that indicates suggested media programs;
 - b) receiving express user preferences from the user;
 - c) displaying, on a single page and in a first list, titles of at least some of the suggested media programs; and
 - d) displaying, on the single page in a second list, titles of at least some media programs that are immediately available to the user and that meet at least one of the user preferences, a separation of the first and second lists being demarcated.

31. The system according to claim 30, wherein the method further comprises:

receiving metadata associated with at least some media programs, the metadata including information that describes the media programs, wherein step d) includes comparing the metadata to the express user preferences, and displaying titles of media programs based on the comparison.

32. The system according to claim 30, wherein step d) includes displaying titles of media programs that do not meet the user preferences and that meet a promotional priority of a service provider.

33. A system, comprising:

- a processor;
- at least one arrangement configured to communicate with the processor via a communications network;
- a computer-readable storing medium storing a set of instructions, the set of instructions capable of being executed by the processor to implement a method for displaying a program guide to a user, the set of instructions performing the steps of:
 - receiving user preferences;
 - receiving an indication of a priority of a programming provider;
 - receiving respective metadata associated with available media programs;
 - comparing the user preferences to the metadata; and
 - displaying, on a single page and in a first list, a first title of at least one of the available media programs if the respective metadata associated with the at least one of the available media programs matches at least one of the user preferences; and
 - displaying, on the single page in a second list, a second title of at least another of the available media programs based on the priority of the programming provider, even if the respective metadata associated with the at least another of the available media programs does not match at least one of the user preferences, wherein a separation of the first and second lists is demarcated.

34. The method according to claim 1, wherein all of the programs whose titles are included in the single integrated list of recommended titles are selected for inclusion of their titles in the single integrated list in accordance with at least one of promotional priorities, user program preferences, and user program experience history.

35. The system according to claim 24, wherein all of the programs whose titles are included in the single integrated list of recommended titles are selected for inclusion of their titles in the single integrated list in accordance with at least one of promotional priorities, user program preferences, and user program experience history.

EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§1.130, 1.131, or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellants in the appeal.

RELATED PROCEEDINGS APPENDIX

As indicated above in Section 2 of this Appeal Brief, “[t]here are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants or the assignee, Home Box Office, Inc., ‘which may be related to, directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal.’” As such, there no “decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]” to be submitted.